APPENDIX.

RELEVANT PARTS OF CERTAIN STATUTES.

Interstate Commerce Act, Sec. 3 (1) (49 U.S.C. Sec 3):

"(1) It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Interstate Commerce Act, Sec. 13 (3) and (4) (49 U.S.C. Sec. 13):

"(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any mat-

ters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part."

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Excerpts from Chapter 111-2/3, Illinois Revised Statutes, 1939:

"Section 36. * * * Whenever there shall be filed with the commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders. without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision

thereon, such rate or other charge, classification, contract, practice, rule or regulation shall not go into effect. The period of suspension of such rate or other charge, classification, contract, practice, rule or regulation shall not extend more than one hundred and twenty days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. Within thirty days after such changes have been authorized by the commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of Section 34 of this Act, in such a manner that all changes shall be plainly indicated. * * *"

"Section 38. No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service. * * *"

"Section 64. The commission, or any commissioner, assistant commissioner, or officer of the commission designated by commission, shall have power to hold investigations, inquiries and hearings concerning any matters cov-

ered by the provisions of this Act, or by any other Acts, relating to public utilities subject to such rules and regulations as the commission may establish. In the conduct of any investigation, inquiry or hearing neither the commission nor any commissioner, assistant commissioner or officer of the commission shall be bound by the technical rules of evidence, and no informality in any proceedings or in the manner of taking testimony before the commission, any commissioner, assistant commissioner or an officer of the commission shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the commission. All hearings conducted by the commission shall be open to the public. * * *"

"Section 68. Complaint may be made by the commission, of its own motion or by any person or corporation, chamber of commerce, board of trade, or any industrial, commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation by petition or complaint in writing, setting forth any act or things done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the commission. In the discretion of the commission, matters presented by one complaint may be ordered separated, and matters upon which complaint may be founded may be joined. No objection shall be sustained to a separation merely because the matters separated are under the ownership, control or management of the same persons or corporation. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint the commission shall cause a copy thereof to be served upon the person or corporation complained of which shall be accompanied by a notice requiring that the complaint be satisfied and answered within a reasonable time to be specified by the commission or within the discretion of the commission by a notice fixing a time when and place where a hearing will be had upon such complaint. Notice of the time and place shall also be given to the complaint and to such other persons as the commission shall deem necessary. The commission shall have au-

thority to hear and investigate any complaint notwithstanding the fact that the person or corporation complained of may have satisfied the complaint. * * *"

"Section 71. * * * Within thirty days after the service of any rule or regulation, order or decision of the commission any party to the action or proceeding may apply for a rehearing in respect to any matter determined in said action or proceeding and specified in the application for rehearing. The commission shall receive and consider such application and shall grant or deny such application within twenty days from the date of the receipt thereof by the commission. In case the application for rehearing is granted the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any rule, regulation, order or decision of the commission unless and until an application for a rehearing thereof shall first have been filed with and acted upon by the commission. * * *"

"Section 72. Within thirty days after the service of any order or decision of the commission refusing an application for a rehearing of any rule, regulation, order or decision of the commission, or within thirty days after the service of any final order or decision of the commission upon and after a rehearing of any rule, regulation, order or decision of the commission, any person or corporation affected by such rule, regulation, order or decision, may appeal to the circuit or superior court of the county in which the subject-matter of the hearing is situated, or if the subject-matter of the hearing is situated in more than one county, then of any one of such counties, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined. The court first acquiring jurisdiction of any appeal from any rule, regulation, order or decision shall have and retain jurisdiction of such appeal and of all further appeals from the same rule, regulation, order or decision until such appeal is disposed of in such circuit or superior court. No proceeding to contest any rule, regulation, decision or order which the commission is authorized to issue without a hearing and has so

issued shall be brought in any court unless application shall have been first made to the commission for a hearing thereon and until after such application has been acted upon by the commission, nor shall any person or corporation in any court urge or rely upon any grounds not set forth in such application for a hearing before the commission, but the commission shall decide the questions presented by said application with all possible expedition consistent with the duties of the commission. The party taking such an appeal shall file with the secretary of the commission, written notice of said appeal. The commission, upon the filing of such notice of appeal, shall, within five days thereafter, file with the clerk of the circuit or superior court to which such appeal is taken a certified copy of the order appealed from and within twenty days thereafter the record provided for in section 65. The party serving such notice of appeal shall, within five days after the service of such notice upon the commission, file a copy of said notice, with proof of service, with the clerk of said court to which such appeal is taken, and thereupon said circuit or superior court shall have jurisdiction over said appeal and the same shall be entered upon the records of said circuit or superior court and shall be tried therein without formal pleadings, but otherwise according to the rules governing other civil cases, so far as the same are applicable. No circuit or superior court shall permit a party affected by any rule, regulation, order or decision of the commission to intervene or become a party plaintiff or appellant in such court who has not taken an appeal from such rule, regulation, order or decision in the manner as herein provided.

A circuit or superior court to which any such appeal is taken shall have the power, and it shall be its duty, in term time or vacation, to hear and determine such appeal with all convenient speed. No new or additional evidence may be introduced in any proceeding upon appeal from a rule, regulation, order or decision of the commission, issued or confirmed after a hearing, but the appeal shall be heard on the record of the commission as certified to by it. The findings and conclusions of the commission on questions of fact

shall be held *prima facie* to be true and as found by the commission; and a rule, regulation, order or decision of the commission shall not be set aside unless it clearly appears that the finding of the commission was against the manifest weight of the evidence presented to or before the commission for and against such rule, regulation, order or decision, or that the same was without the jurisdiction of the commission. If it appears that the commission failed to receive evidence properly proffered, on a hearing or a rehearing, or an application therefor, the court shall remand the case to the commission with instructions to receive the testimony so proffered and rejected, and to enter a new order based upon the evidence theretofore taken, and such new evidence as it is directed to receive, unless it shall appear that such new evidence would not be controlling, in which case the court shall so find in its order. Rules, regulations, orders or decisions of the commission shall be held to be *prima facie* reasonable, and the burden of proof upon all issues raised by the appeal shall be upon the person or corporation appealing from such rules, regulations, orders or decisions.

When no appeal is taken from a rule, regulation, order or decision of the commission, as herein provided, parties affected by such rule, regulation, order or decision, shall be deemed to have waived the right to have the merits of said controversy reviewed by a court and there shall be no trial of the merits of any controversy in which such rule, regulation, order or decision was made, by any court to which application may be made for a writ to enforce the same, or in any other judicial proceeding."

"Section 73. Appeals from all final orders and judgments entered by the said circuit or superior court, in review of rules, regulations, orders or decisions of the commission, may be taken directly to the Supreme Court by either party to the action, within sixty days after the entry of the order or judgment of said circuit or superior court, and shall be governed by the rules applying to other civil cases appealed to said Supreme Court, except that formal pleadings shall not be required."

"Section 76. When complaint has been made to the commission concerning any rate or other charge of any public utility and the commission has found, after a hearing, that the public utility has charged an excessive or unjustly discriminatory amount for its product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

If the public utility does not comply with an order of the commission for the payment of money within the time fixed in such order, the complainant, or any person for whose benefit such order was made, may file in any court of competent jurisdiction a petition setting forth briefly the causes for which he claims damages and the order of the commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the order of the commission shall be *prima facie* evidence of the facts therein stated. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the action. * * *"